

the city shall refund to each bidder a pro rata share of the fee paid so that the total fee received by the city is \$50,000;

(b) for the renewal of a franchise pursuant to section 9-3-71:

(1) not involving an administrative proceeding: \$25,000;

(2) involving an administrative proceeding: the sum set out in subsubsection (1) and an additional \$15,000;

(c) for the modification of a franchise or a franchise agreement pursuant to section 9-3-72: \$12,500;

(d) for approval of a transfer pursuant to section 9-3-80, et seq.:

(1) not involving a transfer of control: \$12,500;

(2) involving a transfer of control: \$25,000;

(e) for the approval of an increase in cable rates or charges pursuant to section 9-3-208:

(1) not involving a cost of service showing: \$15,000 (provided, that the administrator may reduce this fee where the proposed increase will not require significant review by the city);

(2) involving a cost of service showing: the sum set out in subsubsection (1) and an additional \$15,000.

In addition, the city may require a franchisee or, where applicable, a transferee to reimburse the city for its reasonable out-of-pocket expenses in receiving any of the applications and requests identified above, or others addressed in this chapter, including reasonable consultants' fees. Any payments made by a franchisee pursuant to this section, including for consultants' fees, fall within one or more of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2), and do not constitute a franchise fee, and no such payments may be passed through to subscribers in any form, except to the extent federal law or regulation provides that they may be passed through.

Sec. 9-3-60 Public hearings.

Any party submitting an application or a request, or otherwise seeking city approval, under this chapter shall be notified of any public hearing conducted by the city council on the subject of the application, request or matter sought, and shall be given an opportunity to be heard at any such hearing.

ARTICLE D

Initial Grant of Franchise

Sec. 9-3-61 *Length of franchise.*

No initial franchise shall be granted for a period of more than 15 years, although an initial franchise may be renewed pursuant to the terms of this chapter and the applicable franchise agreement.

Sec. 9-3-62 *Initiation of bidding process.*

(a) Any person wishing to obtain an initial franchise shall file with the administrator a request to initiate the franchise bidding process ("RIFBP") pursuant to the terms of this article, which should address the person's proposed cable system.

(b) A RIFBP shall include information sufficient to permit the city to determine whether it would be in the public interest to commence the franchise bidding process under sections 15.1-307 through 15.1-316, Code of Virginia (1950), as amended. Such information shall include, by way of illustration and not of limitation, information regarding:

(1) the impact of the proposed cable system on the cable-related needs and interests of the public;

(2) the impact of the proposed cable system on competition, including the effect that the proposed system would have on existing franchisees and potential future franchises;

(3) the impact of the proposed cable system on public convenience, including the extent to which installation would require replacement or involve disruption of property, public services and uses of public rights-of-way;

(4) the economic and fiscal impact of the proposed cable system;

(5) the impact of the proposed cable system on the public rights-of-way; and

(6) the impact of the proposed cable system on private property rights.

(c) The administrator, following review of a RIFBP, shall forward a recommendation on the request to the city council which shall determine whether the public interest would be served by commencing the requested franchise bidding process. In making this determination, the council may seek additional information from the party submitting the RIFBP or from other sources. If the council concludes that the public interest would be served by

initiating the franchise bidding process, the administrator shall cause the process provided for in section 9-3-63 to commence.

(d) Notwithstanding the prior provisions of this section, the city council may, on its own, commence the process provided for in section 9-3-63 if it determines that the public interest would be served thereby.

Sec. 9-3-63 Grant of franchise: bids, notices, publications, acceptance.

(a) The general law governing the granting of a franchise to use public property, found in sections 15.1-307 through 15.1-316, Code of Virginia (1950), as amended, is, to the extent applicable to the granting of initial franchises addressed in this article, hereby incorporated by reference into this article. Thus, by way of illustration, the city council will grant an initial franchise under this chapter in the following manner.

(b) Following a determination under section 9-3-62 to initiate the franchise bidding process, the city council shall enact an ordinance proposing to grant a franchise and calling for the solicitation of bids, which ordinance shall contain an ordinance making the franchise grant and containing the terms and conditions of the franchise (subject to the execution of a franchise agreement with a successful bidder). The ordinance proposing to make the grant shall be advertised once a week for four successive weeks in a newspaper having general circulation in the city. The advertisement shall invite the submission of bids for the franchise, which bids are to be in writing, are to comply with section 9-3-64 and are to be delivered to city council upon a day and hour named in the advertisement.

(c) Upon receipt of bids, the city council may refer the bids to the administrator for review and evaluation and for the submission of recommendations, and may make or provide for such other investigation as it may determine appropriate.

(d) In evaluating bids for an initial franchise, the city council, and if applicable the administrator, shall consider, among other things, the following factors:

(1) whether the bidder has the financial, technical and legal qualifications to construct, operate and maintain a cable system and to provide, or provide for the provision of, cable service;

(2) whether, the bidder has the financial, technical and legal qualifications to provide adequate public, educational and governmental access channel capacity and facilities, and adequate financial support for same;

(3) whether the bidder or an affiliate of the bidder owns or controls any other cable system in the city;

(4) whether issuance of a franchise to the bidder will eliminate or reduce competition in the delivery of cable service in the city; and

(5) whether issuance of a franchise to the bidder would be in the public interest considering the factors described in section 9-3-62(b).

(e) If the council determines to grant an initial franchise to a bidder, it shall enact the ordinance proposing to make the grant as advertised, subject to the execution of an appropriate franchise agreement specifying the details of the franchise. If the council determines to reject any bids, it shall issue a written decision explaining the basis for its determination.

(f) This chapter is not intended and shall not be interpreted to grant any bidder or any existing franchisee standing to challenge the issuance of a franchise to another person.

(g) Within 30 days after the enactment of the ordinance granting an initial franchise to it, the successful bidder shall present to the city a signed and notarized agreement accepting the provisions of the franchise. At that time, the successful bidder shall file any bonds and security fund deposits required, and fulfill any other requirements then imposed, by this chapter.

Sec. 9-3-64 *Contents of bid.*

Any bid submitted pursuant to section 9-3-63 shall contain, at a minimum, the following information:

(a) the name and address of the bidder and of the following persons: the 10 largest holders of an ownership interest in the bidder; all persons with five percent or more ownership interest in the bidder; all the persons who control the bidder; all officers and directors of the bidder; and, as to each such identified person who holds a five percent or more ownership interest in another cable system, the name of such system and the person's ownership interest in it;

(b) a demonstration of the bidder's technical ability to construct, operate and maintain the proposed cable system, including the identification of key personnel;

(c) a demonstration of the bidder's legal qualifications to construct, operate and maintain the proposed cable system, including a demonstration that the bidder meets the following criteria;

(1) the bidder has not had any cable television franchise validly revoked by any franchising authority within the three years preceding the submission of the bid;

(2) the bidder is authorized under Virginia law to operate a cable system;

(3) the bidder is not precluded by federal law from operating a cable system in the city, and possesses or is qualified to obtain any necessary federal franchises or waivers required to operate a system in the city;

(4) the bidder, within 10 years preceding the submission of the bid, has not been convicted of any act or omission of such character that the bidder cannot be relied upon to deal truthfully with the city and with subscribers of the cable system, or to comply with its obligations under applicable law;

(5) the bidder has not filed any materially misleading information with its bid and has not intentionally withheld information that is required to be provided; and

(6) no elected official of the city holds a controlling interest in the bidder or an affiliate of the bidder;

notwithstanding the foregoing provisions of this subsection, a bidder shall be provided an opportunity to show that it would be inappropriate to find it unqualified to obtain a franchise under this chapter by virtue of subsections (b)(2) or (b)(5), in light of the particular circumstances surrounding the matter and the steps taken by the bidder to cure all harms flowing therefrom and to prevent their recurrence, the lack of involvement of the bidder's principals, or the remoteness of the matter from the operation of a cable system;

(d) a statement prepared by a certified public accountant regarding the bidder's financial ability to complete the construction and to operate the proposed cable system;

(e) a description of the bidder's prior experience in cable system ownership, construction and operation, and an identification of communities in which the bidder or any of its principals have, or have had, a cable franchise or any interest in a cable franchise;

(f) an identification of the area of the city to be served by the proposed cable system;

(g) a detailed description of the physical facilities of the proposed cable system, including the system's channel capacity, technical design, performance characteristics, head-end and access facilities;

(h) a description of the construction of the proposed cable system, including an estimate of plant mileage and its location, a proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in existing conduits, including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(i) the proposed rate structure for the proposed cable system, including projected charges for each service tier, installation, converters and other equipment or services;

(j) a description of the manner in which the bidder will reasonably meet the future cable-related needs and interests of the city, including descriptions of how the bidder will meet the needs described in any recent community needs assessment conducted by or for the city, and how the bidder will provide adequate public, educational, and governmental access channel capacity, facilities or financial support to meet the city's needs and interests;

(k) pro forma financial projections for the proposed franchise term, including a statement of projected income and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

(l) if the bidder proposes to provide cable service to an area already served by an existing cable franchisee, an identification of the area where the overbuild would occur, the potential subscriber density in the area that would encompass the overbuild, and the ability of the public rights-of-way and other property that would be used by the bidder to accommodate an additional cable system;

(m) any other information that may be reasonably necessary to demonstrate compliance with the requirements of this chapter, and any other information that the city may request of the bidder which is relevant to the city's consideration of the bid; and

(n) an affidavit or declaration of the bidder or an authorized officer certifying the truth and accuracy of the information in the bid, acknowledging the enforceability of bid commitments, and certifying that the bid meets all federal and state law requirements.

Sec. 9-3-65 *Requests for initiation and bids.*

The original of any request for the initiation of the franchise bidding process, submitted pursuant to section 9-3-62, and of any bid, submitted pursuant to section 9-3-63, shall be accompanied by 12 copies and the filing fee set out in section 9-3-59, and shall contain all information required by this article.

Except as otherwise provided in this chapter, any such submitted request or bid shall be made available for public inspection.

Sec. 9-3-66 *Public hearings.*

Prior to the granting an initial franchise under this article, the city council shall hold at least one public hearing, following reasonable notice to the public, at which every bidder, all other interested parties and the public shall be afforded a reasonable opportunity to be heard. Reasonable notice to the public shall consist of an advertisement of the date, time, place and subject of such hearing that shall be published in a newspaper having general circulation in the city.

ARTICLE E

Franchise Renewal and Modification

Sec. 9-3-71 *Renewal.*

A franchise may be renewed by the city at its discretion for a period of no more than 15 years, upon application of the franchisee in accordance with the then-existing rules of the FCC and applicable law, including section 15.1-314, Code of Virginia (1950), as amended. The city retains the right to modify the terms of a franchise as a condition of any such renewal.

Sec. 9-3-72 *Application for grant of a franchise renewal.*

(a) An application by a franchisee for renewal of its franchise shall be filed with the administrator, and the application shall be received and reviewed in a manner consistent with the Cable Act, 47 U.S.C. § 546(a)-(g). If neither a franchisee nor the city activates in a timely manner, or can activate, the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the said provisions are repealed), then, except for applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of article D shall apply, and a franchise renewal application shall be treated as a request for the initiation of the bidding process and evaluated using the process and criteria governing the granting of initial franchises.

(b) If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, and if the city act does not act under 47 U.S.C. § 546(h), the administrator shall forward the franchisee's application for renewal to the city council, and thereafter the council, having reviewed the franchisee's past performance under its existing franchise and considered the future cable-related needs and interests of the Alexandria community, may request the franchisee to submit a proposal defining the cable system it proposes to provide under a renewal franchise. If council so requests, the administrator shall establish deadlines for the

franchisee's proposal and may, before or after submission of the proposal, require the franchisee to provide information that the administrator deems pertinent to the franchisee's renewal application or its proposal, or both.

(c) Upon receipt of a franchisee's proposal and all additional information that the administrator has required, the administrator shall provide notice to the public of the receipt of the proposal. No later than 120 days following the receipt of the proposal, the administrator shall recommend to the city council, and the council shall preliminarily determine, by resolution, whether the franchisee's franchise is to be renewed.

(1) If the council determines preliminarily to renew the franchise, it shall direct the administrator to prepare a franchise agreement that incorporates, as appropriate, the commitments made by the franchisee in its franchise renewal proposal and contains other matters deemed pertinent by the administrator. If the franchisee accepts the franchise agreement prepared by the administrator, and the agreement is approved by the city council, the council shall grant a renewal franchise to the franchisee. If the franchise agreement prepared by the administrator is not accepted by the franchisee or is not approved by council within the time limit established by 47 U.S.C. § 546(c)(1), the franchisee's request for a franchise renewal shall be deemed preliminarily denied, and an administrative proceeding under the Cable Act shall be commenced if the franchisee, within 10 business days from the expiration of the time limit established by 47 U.S.C. § 546(c)(1), requests the commencement of such a proceeding.

(2) If the city council determines, preliminarily or otherwise, that a franchise should not be renewed, and the franchisee notifies the administrator no later than 10 business days of the council determination that it wishes to pursue its right to an administrative proceeding under the Cable Act, then such an proceeding shall be commenced in accordance with the Cable Act.

(d) If an administrative proceeding under the Cable Act is commenced on a franchisee's franchise renewal request, the request shall be evaluated on the basis of factors that are consistent with federal law, and shall be conducted in accordance with the following procedures:

(1) The city council shall, by resolution, appoint a hearing officer to preside over the proceeding, which officer can be the council itself.

(2) The hearing officer shall establish a schedule for the proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary

discovery and interrogatory responses will not provide it an adequate opportunity to present its case. The hearing officer may require the production of evidence as the interests of justice may require, including the production of evidence by the franchisee and any entity that owns or controls or is owned or controlled by the franchisee. The hearing officer may also issue protective orders. Enforcement of any order issued by the hearing officer shall be in and by the Circuit Court for the City of Alexandria.

(3) The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by non-parties is not authorized, except to the extent required by the Cable Act.

(4) The hearing officer may require the city and the franchisee to submit prepared testimony prior to the initiation of the hearing. Unless the parties agree otherwise, the franchisee shall present its evidence first, followed by the city. The hearing officer shall see that a transcript is prepared of the proceeding.

(5) The primary factors to be considered by the hearing officer and the parties during the administrative proceeding are:

(i) whether the franchisee has substantially complied with the material terms of its existing franchise and with applicable law;

(ii) whether the quality of the franchisee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of the programming and similar services provided over the cable system, has been reasonable in light of the needs of the Alexandria community;

(iii) whether the franchisee has the financial, legal and technical ability to provide the services, facilities and equipment, as set forth in the operator's proposal; and

(iv) whether the operator's proposal is reasonable to meet the future cable-related needs and interests of the Alexandria community, taking into account the cost of meeting those needs and interests.

(6) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the four factors identified in subsubsection (5). Based on the record of the proceeding, the hearing officer shall then prepare written findings of fact with respect to those factors, and shall submit those findings to the city council (unless the hearing officer is the council, in which case the

written findings shall constitute the final decision of the city), with copies to the administrator and the franchisee.

(7) Where the hearing officer is not the city council, the parties shall have 30 calendar days from the date the hearing officer's findings of fact are submitted to council to file, with the city clerk, their exceptions to the findings. Following the filing of such exceptions and within 90 days of the issuance of the hearing officer's findings of fact, the council, based upon the record before the hearing officer, the officer's findings and any exceptions that have been filed, shall determine whether to renew the franchise. Within 30 days of making its determination, the council shall commit its determination to writing, stating the reasons therefor, which determination shall be consistent with the requirements of the Cable Act and based on the record compiled before the hearing officer. A copy of the final decision of the council shall be provided to the franchisee.

(8) Any determination to deny a franchisee's request for the renewal of its franchise shall be based on one or more adverse findings made with respect to the factors described in subsubsection (5) and 47 U.S.C. § 546(c)(1), which findings are based on the record of the administrative proceeding conducted under this subsection. A determination to deny shall not be based upon a franchisee's failure to substantially comply with the material terms of its franchise under subsubsection (5)(i) or 47 U.S.C. § 546(c)(1)(A), or upon events considered under subsubsection (5)(ii) or 47 U.S.C. § 546(c)(1)(B), where such failure to comply or such events occur after the effective date of the Cable Act, unless the administrator has provided the franchisee with notice and the opportunity to cure, or where it is documented that the city has waived its right to object, or where the franchisee has given written notice of a failure or inability to cure and the city has failed to object within a reasonable time after receipt of such notice.

(9) Any administrative proceeding under this subsection shall be conducted with due speed, but with due regard for the right of the franchisee to fully present its case.

(10) In conducting the administrative proceeding under this subsection, and except as inconsistent with the foregoing, the hearing officer shall adhere, to the extent permissible and feasible, to the Virginia Administrative Process Act, § 9.6-14:1, et seq., Code of Virginia (1950), as amended, or any successor statute.

(e) Nothing in this section shall be construed as preventing a franchisee from submitting an informal request for the renewal of its franchise pursuant to 47 U.S.C. § 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. § 546(h).

(f) The provisions of this article shall be read and applied so that they are consistent with the Cable Act, 47 U.S.C. § 546.

Sec. 9-3-73 Application for modification of a franchise or franchise agreement.

(a) An application for modification of a franchise or a franchise agreement shall be filed with the administrator and shall include, at minimum, the following information:

(i) the specific modification requested;

(ii) the justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the franchisee if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(iii) a statement whether the modification is sought pursuant to the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(iv) any other information that the franchisee believes is necessary for the city to make an informed determination on the application for modification; and

(v) an affidavit or declaration of the franchisee or an authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(b) Following review of the proposed modification, the administrator shall forward the modification, along with a recommendation, to the city council. In making a recommendation, the administrator shall utilize the factors identified below in subsection (c).

(c) Following a public hearing, the city council shall determine whether to approve the proposed modification. In making this determination, the council shall consider the extent to which the modification departs from the terms, conditions and intent of the existing franchise or franchise agreement, the justification for the modification and the extent to which the modification is consistent with and furthers the cable-related needs and interests of the Alexandria community.

ARTICLE F

Franchise Transfers

Sec. 9-3-81 *City approval required.*

No transfer shall occur without prior written application to and approval of the city council, and only then upon such terms and conditions as the council deems necessary and proper. A franchise is a privilege that is in the public trust and personal to the franchisee, and the franchisee's obligations under a franchise involve personal services whose performance involves personal credit, trust and confidence in the franchisee. Any transfer without the prior approval of the city council shall be considered to impair the city's assurance of due performance. The council approval of a transfer in one instance shall not render unnecessary council approval of any subsequent transfer.

Sec. 9-3-82 *Three-year holding requirement.*

No transfer shall be approved by city council within a three-year period following either the acquisition of a cable system, or the initial construction of a system, measured from the date on which cable service is activated to the system's first subscriber, except by a recorded affirmative vote of three-fourths of the members of the city council and in accordance with federal law and regulation.

Sec. 9-3-83 *Application for a transfer.*

(a) A franchisee shall promptly notify the administrator of any proposed transfer. If a transfer should take place without prior notice to the administrator, the franchisee shall promptly notify the administrator that such a transfer has occurred; provided, that such notice shall not be construed as curing the franchisee's failure, before the transfer, to provide the required notice to the administrator and to obtain the required city council approval of the transfer.

(b) At least 120 calendar days prior to the contemplated effective date of a transfer, a franchisee shall submit to the administrator an application for approval of the transfer, unless the administrator has waived this requirement in writing based upon the nature of the proposed transfer. Such an application shall provide complete information on the proposed transfer, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on the cable system, cable service and subscriber rates. At a minimum, the following information shall, unless waived in whole or in part by the administrator, be included in the application:

- (1) all information and forms required under federal law;
- (2) all information required in section 9-3-64(a) through (e), (i), (j), (k), and (n), substituting in these provisions the term "proposed transferee" for the term "bidder";
- (3) a detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the cable system will be made if the proposed is transfer approved;
- (4) any business relationships or transactions of any kind, past, present or anticipated, between the franchisee, or its owners, subsidiaries or affiliates, and any of the proposed tranferees, or their corporate parents, subsidiaries or affiliates, other than the proposed transfer;
- (5) any contracts, financing documents or other documents that relate to the proposed transfer, and all documents, schedules, exhibits or the like referred to therein;
- (6) any documents related to the transfer, including any documents regarding rates that the transferee expects to charge, that have been provided to any entity that has been asked to provide financing (debt, equity or any other kind) for, or to underwrite any offering made in connection with, the proposed transfer;
- (7) any documents provided to the boards of directors, executive committees or similar controlling bodies of the franchisee and of any proposed transferee, or their corporate parents, subsidiaries or affiliates, regarding the proposed transfer;
- (8) any shareholder reports or filings with the Securities and Exchange Commission or the Federal Trade Commission that discuss the transaction, and any filings required under the Clayton Act in connection with the proposed transfer;
- (9) complete financial statements for the franchisee and any potential transferees for the prior three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
- (10) a detailed description of the sources and amounts of the funds to be used in the proposed transfer, indicating how the debt-equity ratio of the cable system will change in the course of the transaction, what entities will be liable for repayment of any debt incurred, what interest, payment schedule and other terms or conditions will apply to any debt financing, any debt coverages or financial ratios that any proposed

transferees will be required to maintain over the franchise term if the proposed transfer is approved, what financial resources would be available to the system under the control of the proposed transferee, and whether the proposed transferee can meet debt-equity or any other required ratios without increasing subscriber rates, with any assumptions underlying that conclusion, and, if not, what rate increases would be required and why;

(11) any other information necessary to provide a complete and accurate understanding of the financial position of the cable system before and after the proposed transfer, including but not limited to two sets of projected income statements and cash flow statements, including capital investments, for at least five years after the proposed transfer, one set assuming the transfer is approved, and one set assuming the transfer is not approved, and each set stating specifically what assumptions are being made with respect to any rebuild or upgrade of the system;

(12) complete information regarding any potential impact of the transfer on subscriber rates and service;

(13) a detailed analysis of franchise fee payments made by the franchisee, or any affiliate, during the life of the franchise, showing (i) total gross revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other), (ii) the revenues, by category, that were included in the calculation of the franchise fee, so that it is clear what, if any, revenues were not included and the dollar value of those exclusions, (iii) the value of any non-cash compensation received (e.g., trades for advertising spots), showing what amounts of non-cash compensation were included in the franchise fee calculation, (iv) what, if any, deductions were made from revenues in calculating the franchise fee (e.g., bad debt), and the amount of each deduction, and (v) if an outside agency was used to collect revenue (e.g., a collection agency, an advertising agency paid on the basis of percentage of sales), how much revenue was received by these agencies, and the total amount of such revenues included for purposes of the franchise fee calculation;

(14) information sufficient to permit the city to determine the franchisee's compliance with its franchise obligations over the term of the franchise, including specific descriptions of any noncompliance of which the franchisee or any potential transferee is aware;

(15) any representations made to anyone, in connection with the proposed transfer, about the franchisee's compliance with its franchise; and

(16) a brief summary of the proposed transferee's plans for at least the upcoming five years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting the performance of the cable system.

(c) For purposes of determining whether a proposed transfer should be approved, the city council, and the administrator, may inquire into all qualifications of the proposed transferee and such other matters as is deemed necessary to determine whether the transfer is in the public interest and should be approved, denied or conditioned.

(d) Following review of the application and the proposed transfer, the administrator shall forward the application, along with a recommendation on the proposed transfer, to the city council. In making a recommendation, the administrator shall utilize the factors identified in section 9-3-85.

Sec. 9-3-84 *Right of city to exercise first refusal.*

If a proposed transfer involves a change in control of the franchisee, as defined in section 9-3-35, the city shall have the right of first refusal to acquire the cable system at a price not to exceed its then fair market value. Any payment for the transfer or assignment of rights to the city shall be governed by the standards of section 9-3-95.

Sec. 9-3-85 *Determination by city council.*

(a) Following receipt of an application for approval of a transfer and the administrator's recommendation, the city council shall determine whether to approve or deny the application, or approve it subject to conditions. In making this determination, the council shall consider the following factors:

(1) the legal, financial and technical qualifications of the proposed transferee to operate the cable system in accordance with this chapter and the franchise agreement between the incumbent franchisee and the city;

(2) the potential impact of the transfer on subscriber rates or services;

(3) whether the incumbent franchisee is in compliance with this chapter and its franchise agreement with the city, and, if not, the proposed transferee's commitment and ability to cure such noncompliance;

(4) whether the proposed transferee owns or controls any other cable system in the city;

(5) the effect that the proposed transfer will have on the competition in the delivery of cable service in the city; and

(6) whether operation of the cable system by the proposed transferee would adversely affect subscribers, the city's interests under this chapter, the existing franchise agreement between the incumbent franchisee and the city, or the public interest, or make it less likely that the future cable-related needs and interests of the Alexandria community will be satisfied at a reasonable cost.

(b) Any transfer without the prior approval of the city council shall be ineffective, and shall make the franchise affected by the transfer subject to cancellation at the city's sole discretion and to any other remedies available under the franchise, this chapter or other applicable law.

(c) The city reserves the right to review, inter alia, the compensation and other consideration associated with any transfer, and to take any necessary steps to ensure that any negotiated sale value which the city deems unreasonable will not adversely affect subscriber rates, including denial of the transfer.

(d) Any mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

Sec. 9-3-86 Transferee's agreement.

No application for the approval of a transfer shall be approved by the city council unless the transferee agrees in writing that it will abide by and accept all terms of the franchise agreement between the incumbent franchisee and the city, and all applicable provisions of this chapter, and that it will assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent franchisee under the franchise agreement and this chapter, for all purposes, including renewal, unless the council, in its discretion, expressly waives all or part of this requirement.

Sec. 9-3-87 Approval does not constitute waiver of city rights.

Approval by the city council of a transfer does not constitute a waiver or release of any of the rights of the city under this chapter or a franchise agreement against the transferor franchisee, whether arising before or after the date of the transfer.

ARTICLE G

Termination of Franchise

Sec. 9-3-91 *Forms of termination.*

A franchise may, in accordance with this article, be terminated by revocation or terminate by expiration.

Sec. 9-3-92 *Revocation of franchise.*

(a) The city shall have the right to revoke a franchise, effective on a date set by the city council no less than 90 days following the date of the decision to revoke, for a franchisee's failure to construct, operate or maintain the cable system as required by this chapter or a franchise agreement, for any other material violation of this chapter or material breach of a franchise agreement, for a franchisee's defrauding or attempting to defraud the city or subscribers, or if the franchise or the cable system is assigned for the benefit of the creditors of the franchisee, or a receiver or trustee is appointed to take over the business of the franchisee, or the franchisee is declared a bankrupt.

(b) Prior to revoking a franchise for one or more of the grounds stated in subsection (a), the city shall follow the procedures in subsections (1), (2) and (3) below, except where the grounds for revocation involve the assignment of the franchise or the cable system for the benefit of creditors, the appointment of a receiver or trustee to take over the franchisee's business, or the franchisee is declared a bankrupt, in which case the provisions of subsection (c) only shall govern.

(1) Whenever the city believes there are grounds to revoke a franchise, written notice shall be provided to the franchisee informing it of those grounds and providing it with an opportunity to remove the grounds within a period of 30 or more days, except that no such opportunity need be provided where the franchisee is believed to have defrauded or attempted to defraud the city or subscribers in which case the notice required by this subsection may be provided and the city may then proceed immediately to the public hearing provided for in subsection (3).

(2) If, within the period stated in the city notice, the franchisee fails to remove the identified grounds for revocation, or at least to initiate and actively pursue corrective action to remove those grounds to the satisfaction of the city, a second written notice to the franchisee shall be provided to the franchisee informing it of the city's intention to pursue revocation of its franchise by holding a public hearing before the city council, or a designee of the council, and of the

date, time and place of the hearing, which shall be no less than 30 days after the date of the notice.

(3) At the public hearing on a franchise revocation, the franchisee shall be given the opportunity to be heard and to present information and evidence regarding the grounds for revocation that have been identified by the city. Following a hearing held before the city council, the council shall determine, based on the information and evidence presented at the hearing and other information of record, whether to revoke the franchise and, if so, the date on which the revocation shall be effective. Following a hearing held before a designee of council, the designee shall determine whether to recommend to council that the franchise be revoked or not revoked, and shall prepare and forward to the council a written report containing the designee's recommendation and the reasons for the recommendation. In addition, the designee shall forward to the council a copy of the record compiled in conjunction with the hearing. Following receipt of such report, the council shall determine, based on the report and the hearing record, whether to revoke the franchise. Whenever the city council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision, and a copy of the decision shall be transmitted to the franchisee.

(c) A franchise may, at the option of the city council following a public hearing, be revoked effective 120 days after the council decision, based upon an assignment of the franchise or the cable system for the benefit of the creditors of the franchisee, or the appointment of a receiver or trustee to take over the business of the franchisee, whether such assignment or appointment takes place in a receivership, reorganization, bankruptcy or other action or proceeding, unless within that 120-day period:

(1) such assignment, receivership or trusteeship has been vacated; or

(2) such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise agreement, and has executed an agreement, approved by a court of competent jurisdiction, in which the assignee, receiver or trustees assumes and agrees to be bound by the terms and conditions of this chapter and the franchise agreement, and such other conditions as may be established or as are required under article D of this chapter.

(d) In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise, following a public hearing before the city council, by serving notice of the revocation on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchisee shall

be revoked and shall terminate 30 days after the service of the notice, unless:

(1) the city has approved the transfer of the franchise to the successful bidder; and

(2) the successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this chapter, and such other conditions as may be established or as are required pursuant to article D of this chapter.

(e) If the city revokes a franchise, the city, pursuant to resolution of the city council, may acquire ownership of the cable system at its then-fair market value. Alternatively, in the case of revocation, the city council may require the former franchisee to remove its facilities and equipment from all, or some, public rights-of-way at the franchisee's sole expense. If the franchisee fails to do so within a reasonable period of time, the removal shall be undertaken by the franchisee's surety. If removal is not undertaken by said surety, the city may undertake the removal itself, and it shall then be reimbursed for all its expenses by the franchisee or the franchisee's surety, or both.

(f) Notwithstanding any other provision of this chapter to the contrary, where the city has granted a franchise requiring the completion of construction of a cable system or of a cable system upgrade, or the completion of other specific obligations, by a specified date, the failure of the franchisee to complete such construction or upgrade, or to comply with such other specific obligations, as required, may, at the option of the city council, result in the automatic termination of the franchise, without the procedures set out in this section, where such automatic termination is provided in the franchise or franchise agreement.

Sec. 9-3-93 *Expiration of franchise.*

A franchise shall terminate upon its expiration date, as set forth in the franchise itself or the franchise agreement. If an expired franchise is not renewed pursuant to article E, the city may, by resolution of the city council, acquire ownership of the franchisee's cable system at the system's then-fair market value. Alternatively, the city council may require the franchisee to remove its facilities and equipment from all, or some, public rights-of-way at the franchisee's sole expense. If the franchisee fails to do so within a reasonable period of time, the removal shall be undertaken by the franchisee's surety. If removal is not undertaken by said surety, the city may undertake the removal itself, and it shall then be reimbursed for all its expenses by the franchisee or the franchisee's surety, or both.

ARTICLE H

System Facilities, Equipment, and Services

Sec. 9-3-101 Compliance with article.

Except as otherwise specifically provided in a franchise agreement, a franchisee shall comply with the requirements set forth in this article, unless such compliance is prohibited by federal law.

Sec. 9-3-102 Provision of service.

After cable service has been established by activating trunk distribution cable for an area specified in a franchise agreement, a franchisee shall provide cable service to any household requesting cable service within that area, including each multiple dwelling unit in the area, except for multiple dwelling units to which it cannot obtain legal access.

Sec. 9-3-103 Full service to municipal buildings.

A franchisee shall install, at no charge to the city, at least one service outlet at each city building within the franchise area, and shall charge only its time and material costs for any additional service outlets to such facilities. The franchisee shall provide the cable services delivered on any service tier to all outlets in such buildings free of charge.

Sec. 9-3-104 State law requirements.

A franchisee shall make available a commonwealth access channel if required by state law, and shall comply with all requirements, if any, of the Virginia Public Telecommunications Council.

Sec. 9-3-105 Leased access requirement.

A franchisee shall provide leased access channels if and as required by federal law.

Sec. 9-3-106 Technical standards.

(a) Any cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards required by federal or state law, including any such standards as hereafter may be amended or adopted by the city in a manner consistent with federal and state law.

(b) A franchisee shall use equipment generally used in high-quality, reliable, modern cable systems of similar design, including, but not limited to, back-up power supplies at all

active locations and at the head-end capable of providing power to the system for a minimum of three hours in the event of an electrical outage, and modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signal received at the head-end with minimal alteration or deterioration. This obligation shall include the obligation to install equipment to retransmit in stereo satellite and local broadcast signals provided in stereo. The obligation to provide backup power supplies requires the franchisee to install equipment that will (i) cut in automatically on failure of commercial utility AC power, (ii) revert automatically to commercial power when it is restored and (iii) prevent the standby power source from powering a "dead" utility line.

(c) A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennae used for receiving television or other broadcast signals.

Sec. 9-3-107 Proof of performance tests.

A franchisee shall perform proof of performance tests, as required by FCC rules, designed to demonstrate compliance with the technical standards in this article, the franchise agreement and FCC requirements. The franchisee shall provide the proof of performance test results promptly to the administrator. The franchisee shall provide the administrator 10 days' advance written notice when a proof of performance test is scheduled so that the city may, if it wishes, have an observer present. The city shall have the right to inspect the cable system during and after its construction to ensure compliance with the technical standards in this article, the franchise agreement and applicable provisions of federal, state and local law, and may require the franchisee to perform additional tests based on the city's investigation of cable system performance or on subscriber complaints.

Sec. 9-3-108 Interconnection.

(a) A franchisee shall design its cable system so that it may be interconnected with any other cable television system or similar communications systems in the Washington, D.C., metropolitan area. Such interconnection may be made by direct cable connection, microwave link, satellite or any other appropriate method.

(b) Upon receiving a request of the city to interconnect, a franchisee shall initiate and pursue negotiations with the other affected system or systems and shall, within a reasonable time, effect the requested interconnection unless the city council finds that the cost of interconnection would cause an

unreasonable increase in subscriber rates or, for other reasons, the interconnection would not be in the public interest.

(c) No interconnection shall take place without the prior approval of the administrator, and such approval shall be given if a franchisee demonstrates that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.

(d) A franchisee shall cooperate with any federal, state or regional regulatory agency established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the city.

Sec. 9-3-109 *Integration of advancements in technology.*

(a) In addition to such upgrades as may be required under a franchise agreement, it shall be the responsibility of a franchisee to periodically upgrade its cable system to implement advancements in technology as may be required to meet the cable-related needs and interests of the Alexandria community in light of the costs thereof. It is recognized that subscribers in the city have an especially strong interest in a system design that will eliminate the need for set-top converters and will permit subscribers to utilize fully the capabilities of consumer electronic equipment while receiving cable service.

(b) To ensure that the franchisee is carrying out its responsibilities hereunder, a franchisee shall be required to submit a report on cable technology to the administrator every odd-numbered year during the franchise term. Each report shall describe developments in cable technology and the particular developments which the franchisee plans to incorporate into the system. The report also shall describe the effect which the developments to be incorporated will have on public, educational and governmental users of the cable system, and the effect of those technological changes on consumer electronic equipment. The report further shall describe how other cable companies have incorporated or are planning to incorporate technological developments into their systems and the estimated timetable for doing so. The administrator, upon receipt of each report, may schedule one or more hearings before the city council so that the council may consider whether the new technologies which the franchisee proposes to incorporate into the system are adequate to meet the future cable-related needs and interests of the Alexandria community. If the council considers such proposed technologies to be adequate, the franchisee shall implement them, subject to section 9-3-110, as if they were specific requirement set forth herein.

(c) A franchisee shall not provide basic services and other cable programming services (excluding premium and pay-per-view programming) in a compressed or digitized form unless authorized by the administrator or the city council; provided, that such authorization may not be unreasonably withheld. In providing such authorization, the administrator or the council, as the case may be, may impose such requirements as necessary to protect the public interest.

(d) Nothing in this section shall be construed as limiting a franchisee's ability to incorporate technological improvements or advances into its cable system to the time period immediately following the report required by subsection (b); provided, that any other improvements or advancements to the system shall be submitted to the administrator or the city council for approval, which approval may not be unreasonably withheld; and provided further, that the actual implementation of such improvements or advancements shall be subject to section 9-3-110.

Sec. 9-3-110 System design review process.

In addition to any requirements included in a franchise agreement, at least 60 days prior to the commencement of construction on any cable system upgrade occurring more than three years after the start of a franchise, the franchisee shall make a detailed system design and construction plan available for review by the city at the local office of the franchisee, which shall include at least the following elements:

- (a) design type, trunk and feeder design, and number and location of hubs or nodes;
- (b) distribution system-cable, fiber and equipment to be used;
- (c) plans for standby power at head-end;
- (d) longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber); and
- (e) design maps and tree trunk maps for the system.

The proposed system design shall be shown on maps of industry standard scale using standard symbols, shall depict all electronic and physical features of the cable plant, and shall satisfy all design and construction obligations applicable to the franchisee under its franchise agreement, this chapter and other applicable law. The city may review the proposed system design and, within 30 days of the date the design is made available for city review, propose revisions that it believes are required to satisfy such obligations. Within 15 days of receipt of these proposed revisions, the franchisee shall submit a revised design to the city incorporating the revisions, unless the city finds,

after further discussion with the franchisee, that the revisions are not required to satisfy the franchisee's obligations.

Sec. 9-3-111 *Emergency alert system.*

A franchisee shall install and thereafter maintain for use by the city an emergency alert system. This system shall be remotely activated by telephone and shall allow a representative of the city to override the audio and video on all channels on the franchisee's cable system in the event of a civil emergency or for reasonable tests. The city shall provide reasonable notice to a franchisee prior to any test use of this system.

ARTICLE I

**Construction, Operation and
Maintenance of Cable System**

Sec. 9-3-121 *System construction schedule.*

(a) Every franchise agreement shall specify, or provide for the preparation of, the construction schedule that will apply to any required construction, upgrade or rebuild of the franchisee's cable system.

(b) Failure on the part of a franchisee to timely commence and thereafter to diligently pursue construction, or otherwise to comply with an agreed-upon construction schedule, shall be grounds for termination of the franchise or for the imposition of penalties under this chapter; provided, that the city council may, for good cause shown, provide additional time for a franchisee to comply with construction schedule requirements.

Sec. 9-3-122 *Construction, operation and maintenance requirements.*

(a) A franchisee shall construct, operate and maintain its cable system in compliance with all applicable laws, ordinances, rules and regulations. The system, and all parts thereof, shall be subject to periodic inspection by the city.

(b) No construction or other activity on or related to a cable system, including any activity within a public right-of-way, shall be commenced by a franchisee until all required permits and approvals have been obtained from the city and other authorities. Any such permit or approval may impose conditions that are necessary to protect structures in the public right-of-way, to ensure the proper restoration of the public right-of-way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the public's utilization of the public right-of-way.

(c) The construction, operation and maintenance of a cable system shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code and other applicable federal, state and local laws and regulations.

(d) All cable system transmission, distribution and other lines, equipment and structures shall be located and installed so as to cause minimum interference with the rights and convenience of property owners.

(e) All installation of electronic equipment shall be of a permanent nature, using durable components.

(f) Any cable system antennae and their supporting structures shall be constructed, painted, lighted and maintained in accordance with applicable rules and regulations of the Federal Aviation Administration and other applicable state and local laws and regulations.

(g) All of a franchisee's plant and equipment, including, but not limited to, its antennae site, head-end, distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures and apparatuses shall be constructed, reconstructed, installed, located, erected, replaced, removed, repaired, operated and maintained in accordance with good engineering practices, and shall be performed by experienced and properly trained maintenance and construction personnel so as not to endanger or unreasonably interfere with any public right-of-way or the use thereof, with any improvements located therein or with the legal rights of any property owner, and so as not to unnecessarily hinder or obstruct the public's use of the right-of-way, including pedestrian and vehicular traffic.

(h) All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury or nuisance to the public.

(i) A franchisee shall not locate facilities, equipment or fixtures where they will interfere with, or in a manner which will cause them to interfere with, any gas, electric, telephone, water, sewer or other utility facility or equipment; nor shall a franchisee, through its facilities, equipment or fixtures, obstruct or hinder in any manner the various utilities serving the residents and businesses of the city or their use of any public rights-of-way.

(j) Any public right-of-way, public property or private property that is disturbed or damaged during, or as a result of,